IN THE SUPREME COURT OF THE STATE OF MISSOURI

Case No. SC92805

BOARD OF MANAGERS OF PARKWAY TOWERS CONDOMINIUM ASSOCIATION, INC., a Missouri Nonprofit corporation,
Respondent,

v.

TRISH CARCOPA,
NICOLE CARCOPA,
OPTION ONE MORTGAGE, and
UNITED STATES OF AMERICA

OPTION ONE MORTGAGE CORPORATION,
Appellant.

Appeal from the Circuit Court of Jackson County, Missouri,
Hon. Robert M. Schieber

APPELLANT'S AMENDED REPLY BRIEF

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ARGUMENT

I. The trial court erred in that §448.3-116 is unconstitutionally vague and ambiguous and Respondent's alleged super priority conveys no benefit to Appellant but serves to deprive Appellant of its interest in its mortgage collateral.

Respondent makes a case in its Respondent's Brief for the extensive repairs that were required, citing to structural components and environmental systems that were in great need of repair. Respondent's Brief at p. 5. Neither the magnitude of the repairs nor their nature is relevant to the issues raised herein. The repairs have never been an issue but rather the issue is that of lien priority and the constitutionality of §448.3-116 RSMo. as it applies to refinancing mortgages. Nor does Appellant contest that there is a public policy to be served by granting condominium associations a mechanism by which to enforce the collection of assessments. There are public policy arguments to support a lender's lien priority

as well. That said, none of the arguments in the Respondent's Brief address the patent ambiguity of the language set forth in §448.3-116 RSMo.

Respondent argues that the language in §448.3-116 RSMo. is clear and that the numerous interpretations presented in the Appellant's Brief are "superfluous and baseless." However, Respondent undertakes no analysis of the several interpretations set forth by Appellant. Rather, Respondent contradicts itself by stating that the language of §448.3-116.2(4) RSMo. is clear and understandable by persons of ordinary intelligence, while simultaneously using subsequent legislative bills to try to show the Legislature's intent at the time of the enactment of §448.3-116.2(4) RSMo. If the language were as clear-cut as Respondent would have this Court believe, then no reference to extrinsic evidence would be necessary. Instead, Respondent's very reliance on subsequent legislative actions only serves to underscore the ambiguity of the language used by the Legislature in §448.3-116 and specifically §448.3-116.2(4) RSMo.

As pointed out in the Appellant's Brief, §448.3-116.2(4) RSMo. is subject to numerous interpretations. *See* Point I, Appellant's Brief at pp. 7-15. Respondent points to §448.3-116.2(4) RSMo. for the proposition that this section "applies only with respect to assessments that are due prior to subsequent refinancing of a unit or subsequent second mortgage. In that narrow instance, priority of the association lien is limited to delinquent assessments or fines and six months of non-delinquent

assessments and fines immediately prior to refinancing." Respondent's Brief at p. 8. Yet this is only one of several possible interpretations of this section. Further, Respondent's interpretation is a confusing interpretation, for how can the condominium association have any lien for non-delinquent assessments due prior to refinancing? If the assessment is not paid, it immediately constitutes a lien on the unit per §448.3-116.1 RSMo. and is thereby delinquent. The condominium association is not entitled to a double payment of assessments, so the interpretation posited by Respondent, that there is a priority of six months of non-delinquent assessments and fines due prior to refinancing has no meaning.

Respondent has bent backward to come up with a new meaning for §448.3-116.2(4) RSMo. Appellant attempted to set forth a complete list of the possible interpretations of subparagraph 4. Yet, Respondent, not to be outdone, has come up with yet another interpretation: that §448.3-116.2(4) "applies only with respect to assessments that are due prior to subsequent refinancing of a unit or subsequent second mortgage. In that narrow instance, priority of the association lien is limited to delinquent assessments or fines and six months of non-delinquent assessments and fines immediately prior to refinancing." Respondent's Brief at p. 8. Note that the emphasis quoted above is original to Respondent's brief. Respondent would have this Court interpret the statute to state that Respondent has priority over all delinquent assessments, no matter when they arose, **plus** a lien for six months of

non-delinquent assessments and fines immediately prior to the refinancing. In their singular chance to explain to this Court the meaning of subparagraph 2(4), Respondent itself gives the greatest reason for pause. With all due respect, this may be unavoidable given the language of the statute. Respondent posits that there are two classes of assessments for which it has super lien priority:

- for all delinquent assessments, no matter when they become delinquent, **and**
- for six months of **non-delinquent** assessments due immediately prior to a refinancing.

Respondent states that the "'words used in [this] statute are of common usage and are understandable by persons of ordinary intelligence.'" Respondent's Brief at 9 (quoting *Reprod. Health Servs. Of Planned Parenthood of the St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685, 689 (Mo. 2006)). Yet, "ordinary intelligence" aside, there is no mention of "**non-delinquent**" assessments in §448.3-116 RSMo. Respondent's argument is that this statute is free of ambiguity and vagueness. Yet, Respondent's own interpretation of the statute, that it "applies only with respect to assessments that are due prior to subsequent refinancing of a unit or subsequent second mortgage. In that narrow instance, priority of the association lien is limited to delinquent assessments or fines and six months of non-delinquent assessments and fines immediately prior to refinancing" inserts an

assertion that the lien priority applies to six months of **non-delinquent** assessments and fines. The statute says nothing about non-delinquent assessments and fines. If the statute is as clear and unambiguous as Respondent would have this Court believe, then how did Respondent arrive at the imposition of a lien for "non-delinquent" assessments when such assessments are not mentioned in §448.3-116 RSMo.? Moreover, given that assessments were billed monthly and delinquent after one month, one wonders how the "six months of non-delinquent assessments and fines" remains non-delinquent over said six months period, much less over the years and months the delinquent assessments continue to be incurred.

One can understand why Respondent felt compelled to materially alter the language of the statute from "delinquent assessments or fines" to "non-delinquent assessments and fines" in reaching this strained interpretation of §448.3-116.2(4). For if Respondent were to say its lien priority was limited to delinquent assessments or fines, plus six months of "delinquent" assessments or fines immediately prior to the refinancing, the statute would be rendered even more confusing than it already is. To what would Respondent add the "six months of delinquent assessments or fines", the "delinquent assessments or fines" that existed prior to the refinance or subsequent to the refinance? If the former, it would be difficult to imagine any reasonable interpretation that gives any meaning to the exception set for forth in §448.3-116.2(4). If the latter, an owner could simply

refinance today such that the new mortgage lien would have priority over all of the claimed condominium assessments, but for six months' worth which were due immediately prior to the refinancing. Thus, were there 48 months of delinquent assessments, an owner would wipe out all but six months of delinquent assessments by refinancing now. To avoid this result, Respondent has to read-in the term "non-delinquent" assessments, even though such language is not contained in the statute.

Respondent's interpretation does not have any practical effect. Prior to making a loan, it is standard practice to pay any assessments that are then due, as they would be of higher priority under Missouri's first in time, first in right theory as to lien priority. *See* §§442.380, 442.390 RSMo. To safeguard their lien priority, lenders as a matter of course pay any delinquent assessments so that they encumber a unit with a "clean slate," *i.e.* there are no outstanding assessments which might otherwise impair their lien priority at the time of the making of the mortgage. Thus, the Respondent's interpretation would give §448.3-116.2(4) RSMo. no practical effect. This would render subparagraph 4 meaningless. Yet, the legislature may not be charged with having done a meaningless act. *See Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo. 1981). Therefore, the Legislature clearly intended some other interpretation than that proposed by Respondent. Appellant's interpretation, based on Comment 2 to §3-116 of the

Uniform Condominium Act (1980), National Conference of Commissioners on Uniform State Laws (Approv'd. Feb. 14, 1987), makes the most sense and truly serves to balance the competing interests and needs of Appellant and Respondent, that Respondent has priority, but only to the extent of six months' worth of assessments due immediately prior to commencement of Respondent's action. *See* Appendix at A48.

And yet, what if a lender does not pay assessments that are due prior to refinancing? Under Respondent's interpretation, the condominium association gets super priority over all delinquent assessments or fines plus six months' of assessments and fines that were assessed prior to refinancing but were "non-delinquent." This raises a possibility that there are pre-refinancing assessments that are not delinquent, but subsequently become delinquent. Are these pre-refinancing assessments then subject to super lien priority and added in to any delinquent assessments arising after the refinancing? Respondent's interpretation suggests so in that Respondent asserts that it has super priority for all delinquent assessments and fines, in addition to six months of non-delinquent assessments or fines due immediately prior to refinancing. Again, this renders subparagraph 2(4) meaningless because, as soon as the six months of non-delinquent assessment immediately prior to refinancing become delinquent, the condominium association would have complete priority over them, as Respondent interprets the statute that it

has complete priority for all delinquent assessments, no matter when they arise. Thus, the "six months of non-delinquent assessments and fines immediately prior to refinancing" portion of Respondent's interpretation is rendered meaningless as Respondent argues that it has a lien for all delinquent assessment regardless of whenever they may have been originally due. According to Respondent, as soon as an assessment becomes delinquent the association has a super-priority lien, regardless of whether said assessment was originally due pre or post refinancing.

Respondent points to two subsequent senate bills, SB 903 from 1998 and SB 299 in 1999, for the proposition that its interpretation is accurate. However, these two bills evidence an interest in not only protecting a mortgagee's lien position vis-à-vis the condominium association's lien priority, but sought to expand the protection and lien priority of a mortgagee by amending the law to include all deeds of trust recorded before the date on which the assessment to be enforced became delinquent. *See* SB 299; Respondent's Brief at p. 9. There is clearly a manifested intent to protect mortgagees and their lien priority, thereby inducing lenders to agree to mortgage and refinance condominium units. As a result, these later bills contravene Respondent's argument that the Legislature intended that Respondent should have complete priority. Rather, they are indicative of the Legislature's interest in assuring a mortgagee's lien is protected. Neither of the subsequent bills cited by Respondent discuss the six month delinquency issue.

Rather the argument in the legislature seems to be if any distinction should be made between a refinancing deed of trust or a purchase money deed of trust. The bills give no indication of any analysis of §448.3-116.2(4) RSMo.

The bill summary of the Truly Agreed To and Finally Passed version of Senate Bill 852, the bill which enacted the current version of §448.3-116 RSMo., is particularly instructive. A copy of this summary is attached to this Amended Reply Brief in its Reply Appendix at A1. As Respondent raises the case summaries of the subsequent Senate Bills 903 and 229 as being significant, a review of SB 852's Truly Agreed To and Finally Passed summary is definitive, as it represents the bill in its finally negotiated, agreed and ultimately enacted version. The summary states:

> [l]iens for delinquent assessments on condominium units are given priority over all other liens **except those that were recorded prior to the delinquency and government obligations. Liens less than, or equal to, six months' assessments must be satisfied prior to the refinancing of the unit or any subsequent second mortgage.**

Summary of Truly Agreed to and Finally Passed SB 852 (emphasis added). Thus, if one is to consider the bill summary as the clear expression of the Legislature's intent, as urged by Respondent, the intent of the Legislature in 1998 in passing SB 852 is clear. The Legislature clearly wanted to grant priority to all liens recorded

prior to delinquency, just like Appellant's lien. Appellant's lien was recorded July 17, 2006. Legal File ("LF") at 192. But Respondent's assessments were not delinquent until 2007. LF at 10, 19. Thus, if the bill summary is to be granted its full due as an expression of the Legislature's intent, as proposed by Respondent, then it is clear that Appellant's lien should and must have priority over the condominium association's lien because Appellant's deed of trust was recorded prior to the Appellant's assessments becoming delinquent. The Legislature clearly expressed its intent that a condominium association lien was to have priority over all other liens **except those recorded prior to the delinquency.** Thus, while poorly worded in the actual statute, the summary of SB 852, as finally agreed and passed, clearly states that the Missouri Legislature intended to protect lienholders in Appellant's position.

Respondent's own strained interpretation does not comport with the expressed legislative intent, which intent is expressed in the above bill summary. Rather, Respondent's interpretation is diametrically opposed to the intent expressed in the summary to the finally agreed and passed SB 852. Respondent states that §448.3-116.2(4) RSMo. provides for a complete priority to the condominium association for all delinquent assessments and fines. Yet the summary clearly states that lienholders who recorded their lien before the association's dues become delinquent have priority. Respondent does not have

complete priority as to all delinquencies because Appellant's Deed of Trust was recorded prior to the association's dues becoming delinquent. *See* LF at 10, 19, 192. The Legislature expressed its intent that where a mortgagee has a prior recorded lien, that lien has priority over any assessments that become due after the date on which the mortgagee recorded its lien. This is in stark contrast to Respondent's interpretation that the condominium association has complete priority for all delinquent assessments, no matter when arising. Respondent's own interpretation does not match the expressed legislative intent, set forth in the Summary to the final version of SB 852. This is in spite of Respondent's urging that bill summaries are critical to the Court's review and interpretation of a statute.

The Truly Agreed and to and Finally Passed SB 852 started as a bill introduced by Senator Yeckel in SB 903. A copy of SB 903 is further attached in the Reply Appendix. It is significant to note that SB 903 is captioned, or titled, as a bill that "gives priority over condominium association lien to mortgage/deed of trust recorded before delinquency of assessment." Reply Appendix at A6. As proposed, SB 903's bill summary stated that:

> Current law states that a lien of a condominium association takes priority over all other liens and encumbrances on the condominium unit except as otherwise specified. This act expands the exceptions to the priority of the condominium association's lien to include a mortgage and deed of trust

> recorded before the date on which the assessment sought to be enforced by the condominium association became delinquent.

SB 903, Bill Summary, Reply Appendix at A6. This summary is then followed by the statement that the above provisions are contained in the Truly Agreed To and Finally Passed HCS/SS/SB 852 & 913. *Supra*. These provisions are also cross referenced in Truly Agreed To and Finally Passed SB 852, which states that its provisions are also contained in SB 903. Reply Appendix at A2. Thus, the title or caption of SB 903, the summary of SB 903 and the summary contained in the Truly Agreed To and Finally Passed SB 852 all clearly indicate a legislative intent that a deed of trust, recorded prior to any delinquent condominium assessments, was to have priority over the condominium association's lien. As further evidence of this intent, the language of SB 903 strikes the provision "for the purchase of a unit" from §448.3-116.2(2) RSMo so that the exceptions are expanded to include all deeds of trust recorded prior to the date of delinquency…not just purchase money mortgages. *See* Reply Appendix at A3. This is the language that, per the summary, was "contained in Truly Agreed to and Finally Passed HCS/SS/SB 852 & 913". Yet the finally agreed version of §448.3-116 inexplicably resulted in the confusing and unintended language we are faced with today.

The Legislature relied on the summaries and titles in voting on the bills as they represent the intended result. Yet, sometimes what is ultimately passed has

unintended consequences. This Court was faced with a similar situation in the case of *National Solid Waste Mgmt. Ass'n. v. Director of the Dep't. of Natural Resources*, 964 S.W.2d 818 (Mo. 1988). In that case the Court looked to the title of the bill in comparison to the language actual enacted to determine the application of the statute "seems to be incidental and perhaps even unintentional." *National Sold Waste* at 822. In *National Sold Waste* this Court looked to the title of the relevant bill to determine the legislative intent. *Id.* The Court then determined that the statute did not comport with the expressed intent of the legislature and that the application of the statute was incidental or even unintentional. *Id.* Just as in the present case, the statute as written and enacted led to unintended results. The intention of SB 903 and the Truly Agreed To and Finally Passed SB 852 was to grant priority to mortgages or deeds of trust recorded prior to delinquency of assessments. Accordingly, Appellant's Deed of Trust should have priority as it was recorded prior to the Respondent's assessments becoming delinquent. Yet as interpreted by the trial court, the opposite result has been reached. This is clearly a case of an "incidental" or "unintended" application of the law in contravention of the Legislature's intent.

Respondent further urges a "public policy" argument that it is to a mortgagee's benefit to grant a condominium association broad super-priority. It bases this argument on the theory that by granting a condominium association such

broad super-priority status, the value of the condominium property can be maximized. While it is certainly an important consideration that the condominium property is properly maintained and the value of the unit is maximized, a lender also has to look to the future. The statute, as interpreted by Respondent, would rob a refinancing lender of all priority for any assessments that arise after the time of the refinancing. A mortgagee lends money and accepts a deed of trust on a condominium unit with the expectation that the mortgage will be paid, but also with the realization that this is not always the case. There is always a possibility that a mortgagor will default. If a mortgagor defaults on his mortgage, odds are that he has also failed to maintain the condominium assessment payments. In that event, and if the statute is interpreted as Respondent would have this Court interpret it, no mortgagee of a refinancing or second mortgage loan could maintain its lien priority as against the condominium association without incurring the further expense of paying any and all delinquent assessments. Contrary to Respondent's position, this would serve as a disincentive for any mortgagee to refinance a mortgage on a condominium unit. The principal motivation for a lender to make a loan is the knowledge that, if there is a default, the lender (or mortgagee) can foreclose on the collateral, in this case the condominium unit. However, as interpreted by Respondent, the condominium association has absolute priority and can extinguish a mortgagee's interest unless the mortgagee is the

holder of a purchase money mortgage. A refinancing mortgagee is at a complete risk that its deed of trust can be extinguished unless all delinquent assessments are paid in full.

Further, Respondent propounds the misnomer that assessments serve to protect the mortgagee's collateral, the condominium unit, from a loss in value "as a result of any failure to improve or maintain the property by the property owner." This is a misnomer because the condominium association is charged with the duty of maintaining the common areas of the condominium development as a whole. The association has no responsibility, liability, duty or authority to improve or maintain the actual unit pledged as collateral. As noted by Respondent, it has the authority to levy assessments for the maintenance of the common elements. §448.3-102.1(6)-(7) RSMo. However, the condominium association has no authority to maintain the individual condominium units. This is the responsibility of the owner. Thus, whether condominium assessments are paid or not does not impact the maintenance and improvement of the actual unit that is pledged as collateral for the mortgagee's loan.

II. Subparagraph 4 is not severable as such would defeat the purpose of making the statute uniform among the states enacting it as well as defeating the Legislature's intent in protecting the lien priority of refinance deeds of trust.

Appellant did not misconstrue the trial court's reference to *Carroll v. Oak Hall Associates*, 898 S.W.2d 603 (Mo.App. 1995), as argued by Respondent. In reaching its ruling that Respondent had complete lien priority, the trial court stated:

> The deed of trust in this case, just like the one in *Carroll*, "was admittedly not a purchase money deed of trust," and pursuant to § 44[8].3-116.2(2), it "therefore has no claim to priority over the common expenses lien." *Carroll v. Oak Hall Associates*, 898 S.W.2d 603, 608 (Mo.App. 1995).

Appellant Appendix at A1; Legal File at 155 (emphasis added). Appellant clearly did not misconstrue the trial court's reliance on *Carroll* because the trial court made specific reference to §448.3-116.2(2), the purchase money exception to lien priority which was relied on by the court in *Carroll*. Absolutely no mention is made of any analysis or review of §448.3-116.2(4) in the trial court's ruling on partial summary judgment. When presented at the bench trial, the trial judge acknowledged the preservation of the issue for appellate purposes, but otherwise refused to revisit the prior partial summary judgment which declared Respondent's lien in a superior lien position to Appellant's. Transcript at p. 8, lines 17-23.

Respondent argues that §448.3-116.2(4) RSMo., should it be found unconstitutional, should be severed from the remainder of §448.3-116 RSMo. Yet this would defeat the purpose of the enactment. §448.1-110 RSMo. states that the general purpose of Sections 448.1-101 to 448.4-120 was "to make uniform the law

with respect to the subjection of sections 448.1-101 to 448.4-120 among states enacting it." Yet severing subparagraph 2(4) from §448.3-116 would serve to defeat this purpose. The Uniform Act, as proposed by the National Conference of Commissioners on Uniform State Laws, provided as an integral part that condominium liens have limited priority of six months' worth of assessments due immediately prior to institution of an action to enforce the assessment lien. *See* Appellant's Appendix at A48. As noted by the Commission, this struck a balance between the needs of the association to enforce its liens and a mortgagee's need to protect its secured interest in the condominium unit. Appendix at A48. Severance of subparagraph 2(4) of Section 448.3-116 would defeat this general purpose and thwart the balancing of interests promoted by the Commissioners. Severing subparagraph (4) of paragraph 2 of §448.3-116 would be in contravention of the mandate of §448.1-110 RSMo. wherein the Uniform Condominium Act is to be applied and construed to give effect to the purpose of making the law uniform between the states. As such, subparagraph (4) is integrally entwined with the balance of §448.3-116, such that severance is not applicable and would defeat the purposes expressed in §448.1-110.

In addition, striking §448.3-116.2(4) would defeat the Legislature's intent, as expressed in the summary of the Truly Agreed To and Finally Passed Summary of SB 852. As noted in Point I, above, said summary clearly states that it was the

Legislature's express intent to grant lien priority for liens recorded prior to the delinquency. Severing and striking subparagraph .2(4) would only serve to defeat this expressed legislative intent.

III. §448.3-116 is not in harmony with Chapter 443 RSMo. and should be stricken.

Respondent argues that §448.3-116 RSMo. is in accord with Chapter 443 RSMo. To support its argument, Respondent states that the Declarations of Condominium can be set up to include procedures permitting assessments to be non-judicially foreclosed, consistent with the requirements of Chapter 443. Respondent rightly points out that the Declarations of Condominium is a recorded instrument and that the Declarations constitute perfection of an association's lien for assessments. Yet Respondent misconstrues Appellant's argument that some document be recorded setting forth the amount due on the assessments. Rather, Appellant points out that Chapter 443 makes specific reference to the recording of a mortgage or deed of trust. Specifically, §443.320 RSMo. specifies that the notice of sale required by §443.310 RSMo. must set forth the date and book and page of the mortgage or deed of trust being foreclosed. Chapter 443 does not require a notice of the amount being foreclosed or the specific amount of the lien or amount in default.

As such, Respondent clearly misreads Appellant's argument. Rather, Chapter 443 makes reference to the recording information of the deed of trust. Chapter 443 is specific to the mortgage or deed of trust. It does not reference a generic "security instrument" in the notice provisions. Rather, the requirement is that the "notice required by section 443.310 shall set forth the date and book and page of the record of such mortgages or deeds of trust…". §443.320 RSMo. (emphasis added). The notice of sale sent prior to foreclosure is required to identify the deed of trust or mortgage being foreclosed by stating the names of the parties thereto, the legal description of the property being foreclosed, and the book and page of where the mortgage or deed of trust is recorded. §443.325.1 RSMo. A condominium declaration is not a mortgage or deed of trust. As such, it is outside the requirements of §443.320 – 443.325 RSMo., such that any delinquent assessment cannot be foreclosed "in like manner" under the provisions of Chapter 443 RSMo. *See* §448.3-116.1 RSMo.

Likewise, the central issue around a foreclosure sale is that the sale be conducted by a trustee. *See* §443.327 RSMo. Respondent downplays this requirement by citing that anyone can serve as a trustee, and that a condominium declaration can adopt procedures to name or appoint a trustee. Yet Respondent points to §448.3-119 RSMo. for the proposition that the association can act as trustee for the purposes of foreclosure or that the association "appropriates a

qualified third party to do so." Respondent's Brief at 16. Yet, Respondent does not and cannot expound on who would be such an appropriate third party. Respondent's argument that the condominium association itself can act as trustee is an overreaching of the meaning of trustee as intended under §3-119 of the Uniform Condominium Act. §448.3-119 RSMo. was adopted verbatim from the 1980 Uniform Condominium Act propounded by the National Conference of Commissioners on Uniform State Laws. The Comment issued by the Commissioners related to §3-119 of the Uniform Condominium Act states in its entirety:

> Based on Section 7 of the Uniform Trustee's Powers Act, this section is intended to protect an innocent third party in its dealings with the association only when the association is acting as a trustee for the unit owners, either under Section 3-113 for insurance proceeds, or Section 2-118 following termination.

Uniform Condominium Act (1980), National Conference of Commissioners on Uniform State Laws (Approv'd. Feb. 14, 1987), §3-119, Comment. Thus, the drafters of the Uniform Condominium Act clearly intended to limit the liability and obligations of the condominium association to actions where the association was acting as trustee for all the unit owners for insurance proceeds or termination purposes, not for foreclosure. Respondent's argument that the association can

operate as a trustee for purposes of foreclosing an assessment lien is therefore incorrect. As a result, §448.3-116 RSMo. can still not be reconciled with the provisions of Chapter 443 of the Missouri Revised Statutes, such that §448.3-116 must be stricken.

Conclusion

For the reasons set forth herein and in Appellant's Brief, §448.3-116 is unconstitutional as written and as applied and should be stricken. In the alternative, the trial court's ruling should be reversed and remanded with instructions that the condominium lien be awarded priority but only as to six months' of assessments due immediately prior to the commencement of Respondent's action.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH
MISSOURI SUPREME COURT FULE 84.06(b) and (c)

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) and, according to the word count function on Microsoft Office Word, by which it was prepared, contains 4,881 words.

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CERTIFICATE OF SERVICE

Comes now, the undersigned, and hereby certifies that on May 20, 2013, an electronic version of this Reply Brief was submitted to the Clerk of the Supreme Court for filing by using the Court's electronic filing system. The undersigned further understands that by so filing electronically, service is accomplished on all attorneys of record.

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